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**Via ECF**

Honorable Faith S. Hochberg  
United States District Court  
District of New Jersey  
Martin Luther King, Jr. Federal Bldg. PO 01  
Newark, NJ 07101

Re: *Canavan, et al. v. Harbeck, et al., Case No. 10-954 (FSH)*  
("New Jersey Action")

Dear Judge Hochberg:

We are counsel to Irving H. Picard, Esq., the Trustee for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC under SIPA and the estate of Bernard L. Madoff individually ("BLMIS Liquidation Proceeding"), which is pending before the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). The Trustee writes to correct any misimpression which may exist as a result of a letter dated June 28, 2008 ("Plaintiffs' Letter") to the Court from counsel for Plaintiffs in the New Jersey Action ("New Jersey Plaintiffs").

The Trustee is not a party to the above-captioned New Jersey Action pending before Your Honor, but is the Plaintiff in an adversary proceeding commenced in the Bankruptcy Court against the New Jersey Plaintiffs. *Picard v. Canavan, et al.*, Adv. Proc. No. 10-3200 (BRL) (Bankr. S.D.N.Y. 2010). In that adversary proceeding, the Trustee moved to enjoin the New Jersey Plaintiffs from litigating the New Jersey Action on the grounds, among others, that the New Jersey Action is a relitigation of the Bankruptcy Court's ruling concerning the proper calculation of a customer claim and corresponding right to an advance of funds from the Securities Investor Protection Corporation (the "Net Equity Determination"). The Bankruptcy Court's ruling with respect to the Net Equity Determination was appealed by, among others, counsel for the New Jersey Plaintiffs, and that appeal is currently pending before the United States Court of Appeals for the Second Circuit (Case No. 10-2378).

During approximately the same period of time that the Trustee's application for a preliminary injunction was briefed in the Bankruptcy Court, two motions were briefed before Your Honor in the New Jersey Action. One is the motion of the SIPC

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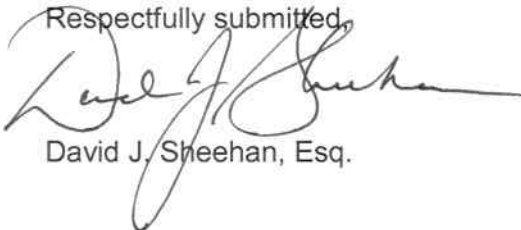
Defendants<sup>1</sup> to transfer the New Jersey Action to the Southern District of New York for ultimate referral to the Bankruptcy Court where the BLMIS Liquidation Proceeding is pending. The other is a motion by the United States to substitute itself for the two government employee SIPC Defendants. Both motions have been opposed by the New Jersey Plaintiffs, and both motions are fully briefed and pending before Your Honor.

In a letter dated June 24, 2010, the Trustee advised the Bankruptcy Court and counsel for the New Jersey Plaintiffs that a resolution of those motions before Your Honor may obviate or otherwise affect the need for the Bankruptcy Court to enter an injunction. As a result, the Trustee sought and obtained from the Bankruptcy Court an adjournment of the hearing on his application for a preliminary injunction over the objection of the New Jersey Plaintiffs. The current adjourned hearing date is September 15, 2010.

While the Plaintiffs' Letter argues that there is no basis for an injunction, the Trustee clearly disagrees. Nonetheless, the Trustee's requested adjournment is based on deference to this Court in the first instance given the pending motions before Your Honor, decisions on which will affect the relief sought by the Trustee.

If the Court has any questions, please do not hesitate to have a member of Your Honor's staff contact me.

Respectfully submitted,



David J. Sheehan, Esq.

cc: Helen Davis Chaitman, Esq.  
Alan Naar, Esq.  
Jeff Ehrlich, Esq.

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<sup>1</sup> The "SIPC Defendants" are current and former members of the board of directors and the president of the Securities Investor Protection Corporation, who are named as defendants in the New Jersey Action.